

REMARKS

Applicants are grateful to the Examiner for indicating that claims 1-14, 23-44 and 46 are allowed.

Reconsideration of the rejection of claims 15-22 and 45 in present application is requested on the basis of the following reasons.

1. Rejection of claim 45 under 35 U.S.C. § 112, second paragraph

Claim 45 presently stands rejected under 35 U.S.C. § 112, second paragraph for failing to distinctly claim the subject matter contained therein. In the "List of Current Claims," claim 45 is shown having been amended to recite the limitation that the subject matter recited therein relates to a "pesticidal composition." This amendment was necessitated due to the dependency of claim 45 from claim 17 which positively recites a pesticidal composition.

Claim 46 has been amended on similar grounds to claim 45 and now recites the limitation that it relates to an "insect trap." This amendment was necessitated due to the dependency of claim 46 from claim 23 which positively recites an insect trap.

In view of amended claim 45, and further in view of claim 46, Applicants respectfully submit that claims 45 and 46 comply with 35 U.S.C. § 112, second paragraph. Withdrawal of this rejection is courteously requested.

2. Rejection of claims 15-21 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,686,113 (Speaker et al.)

Claims 15-21 presently stand rejected as being anticipated by the disclosure of Speaker et al. Applicants respectfully traverse this rejection on the basis that Speaker et al. fail to disclose or suggest, whether explicitly or implicitly, a pesticidal composition either recited in claims 15 or 17 of present application. Claims 16 and

18-21, which depend directly from claim 15, are thus patentable based on their dependency from claim 15 and individually recited features.

Regarding claim 15 of the present application, in the Action it has been asserted that column 13, lines 5-67 of Speaker et al. discloses a pesticidal composition in particulate form comprising composite particles each having a core of an inert substance and a pesticide or behavior modifying chemical impregnated thereon, and the core is impregnated or coated with magnetic material. Applicants respectfully disagree that the above passage of Speaker et al. discloses the aforesaid combination of features of the present invention instead. Speaker et al. actually disclose a microcapsule that includes an aqueous core surrounded by a capsular wall having a surface provided with peptides linked thereto (col. 4, lines 15-22). The capsular wall is noted as comprising a reaction product of a specified polymer and a specified monomer (col. 4, lines 20-22).

The rejection of claim 15 appears to be solely based on the aforesaid passage of Speaker et al. Applicants would like to point out, however, that this passage describes that the microcapsule may be loaded with an active ingredient in its aqueous core. The description provides a list of examples of active ingredients from line 9 to line 67 and it is quite clear from the disclosure of Speaker et al. that the aqueous core of the microcapsules includes an active ingredient that forms a portion thereof.

While on lines 13-14 in column 13 of Speaker et al. there is a reference to magnetic materials, and on line 15 of column 13 there is a reference to pesticides or pheromones, there is no disclosure or suggestion that the magnetic material could be combined with a pesticide or behavior modifying chemical to form a pesticidal composition. Merely instead, Speaker et al. provide a list of possible active ingredients that may individually be used on the aqueous core.

While it may be argued that the list of compositions provided by Speaker et al. describe the pesticidal composition of claim 15 of the present invention, Applicants assert that Speaker et al. fail to provide a basis to reasonably support the determination that the combination of a pesticidal behavior modifying chemical and a magnetic material with a core of inert substance as recited in claim 15 of the present invention necessarily flows from this list. Simply put, even if it is possible or probable that Speaker et al. may disclose providing a microcapsule with either a pesticidal behavior modifying chemical or a magnetic material, such speculation that these features may be combined is insufficient without any additional basis contained in the reference itself (See MPEP 2112; *In re Robertson*, 169 F.3d 743 (Fed. Cir. 1999)).

It will be further noted that claim 15 of the present application is directed to a pesticidal composition comprising composite particles with a core of inert substance. On the other hand, it is plainly evident that the disclosure of Speaker et al. teaches a microcapsule having a core that is loaded with an active ingredient. Thus, the disclosure of Speaker et al. cannot be construed to teach a pesticidal composition with a core that is inert.

It will be understood that the pesticidal composition recited in claim 15 of the present application requires that the inert substance has a pesticidal behavior modifying chemical impregnated or associated thereon and a magnetic material impregnated on or coated onto the core. Contrariwise, Speaker et al. teach that the magnetic material or pesticidal behavior modifying chemical must comprise a part of the core rather than be impregnated onto the core or coated onto the core material.

Accordingly, in view of these observations of the disclosure of Speaker et al., Applicants submit that Speaker et al. fail to disclose or suggest each and every element of the pesticidal composition of claim 15. Furthermore, Applicants assert that one of ordinary skill in the art of pesticidal compositions would not be motivated by the teachings of Speaker et al. to make the pesticidal composition of claim 15

since there is no teaching provided therein that suggests a pesticidal composition comprising an inert core with behavior modifying chemical impregnated thereon or associated therewith, and a magnetic material impregnated on or coated onto the core.

Regarding claim 17 of the present application, this claim is directed to particles comprising magnetic material in admixture with a pesticidal or behavior modifying chemical, or particles of a magnetic material coated with a pesticide or behavior modifying chemical. On the contrary, Speaker et al. describe a microcapsule having an active ingredient in an aqueous core and that the microcapsule may include a magnetic material. There is no disclosure or suggestion that the magnetic material is provided as particles. Moreover, as discussed in relation to claim 15, there is no disclosure or suggestion that magnetic materials would be admixed with a pesticide or behavior modifying chemical.

Accordingly, in view of these observations on claim 17, Applicants submit that the disclosure of Speaker et al. fails to disclose or suggest the pesticidal composition of claim 17 in the present application.

Turning to claims 16 and 18-21 which directly depend from claim 15, Applicants submit that these claims are patentable in view of their dependency on claim 15 and their individually recited features. More specifically, Applicants assert that there is no basis found in the teachings of Speaker et al. for the different cores recited in claim 16 and the pesticide compositions of claims 18, 19 and 21 in combination with the elements of the pesticidal composition of claim 15.

In view of these observations on claims 15-21, Applicants submit that the disclosure of Speaker et al. fails to disclose or suggest each and every element of the pesticidal compositions of claims 15-21 in the present application. Accordingly, withdrawal of the rejection is respectfully requested.

3. Rejection of claim 22 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,686,113 (Speaker et al.)

In the Action, claim 22 has been rejected as being unpatentable over the disclosure of Speaker et al. Applicants would like to point out that claim 15 directly depends from claim 15 which was discussed above and distinguished from the teachings of Speaker et al. In view of the above-observations on Speaker et al., Applicants submit that there is no disclosure or suggestion contained in Speaker et al. that would motivate one skilled in the art to make a pesticidal composition as recited in claim 15 with the added feature of a ferromagnetic oxide as the magnetic material as recited in claim 18 of the present invention.

Accordingly, Applicants respectfully request withdrawal of this rejection on the basis that Speaker et al. fail to disclose or suggest the basic pesticidal composition recited in claim 15 in combination with the ferromagnetic oxide magnetic material recited in claim 18 of the present invention.

4. Conclusion

In view of the amendment to claims 45 and 46, and further in view of the foregoing remarks, it is respectfully submitted that the application is in condition for allowance. Accordingly, it is respectfully requested that claims 15-22 and 45 be allowed and the application be passed to issue.

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Examiner: Susan L. PIASCIK
Art Unit: 3643

If any issues remain that may be resolved by a telephone or facsimile communication with the Applicants' Attorney, the Examiner is invited to contact the undersigned at the numbers shown below.

BACON & THOMAS, PLLC
625 Slaters Lane, Fourth Floor
Alexandria, Virginia 22314-1176
Phone: (703) 683-0500

Date: October 9, 2003

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Justin J. Cassell", written in a cursive style.

JUSTIN J. CASSELL
Attorney for Applicants
Registration No. 46,205